THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION NOS. 920 AND 940 OF 2006

% 01-03-2006

Between:

Hedaplast Industries … Petitioner

And

Deputy Commissioner (CT)

and another … Respondents

! COUNSEL FOR THE PETITITIONER: Sri S.Chakrapani

^ COUNSEL FOR RESPONDENTS: Sri K.Raji Reddy

Spl.S.C.for Commercial Taxes

< Gist:

> Head Note:

? CITATIONS:

1. 85 STC 23 (1992)

2. 52 ELT 341

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COMMON ORDER (Per the Hon'ble Sri Bilal Nazki, J):

Heard learned Senior Counsel appearing for the petitioner and also learned Government Pleader for the respondents.

In both these writ petitions, same questions of law and fact are raised. The petitioner is same in both the cases and the controversy revolves around the assessment year 2000-2001 and assessment year 2001-2002. In the two writ petitions, the impugned orders were passed, on a revision, by the Deputy Commissioner of Commercial Taxes, Charminar Division, Hyderabad. The petitioner is dealing with plastic made syntex water tanks. His contention is that the goods are taxable under Entry-19 of the First schedule to the Andhra Pradesh General Sales Tax Act, 1957 (for short "the Act") and not under Entry-187 of the First Schedule to the Act. The revisional authority by way of the assessment has taxed the goods under Entry-187 of the First Schedule to the Act, whereas, it was taxable

under Entry-19 of the First Schedule to the Act at the rate of 4%.

Entry-19 of the First Schedule to the Act has been modified with effect from 12-05-1997. Prior to 1997, Entry-19 read as under:

> *"Containers, other than gunnies, bottles and plastic containers"*

With effect from 12-05-1997, the Entry has been modified in the following terms.

Description of goods Rate of Tax

i. Packing material, that is to say, bottles of all types whether made of glass, plastic or any fibre or any other material

a. When sold without contents. 4 paise in the Rupee

b. When sold containing contents. The rate at which the content is liable to tax

ii. HDPE Woven Sacks High Density Polythylene Polyproplylene (HDPE/PP) Woven sacks, Polythene bags and plastic bags (HDPE/PP) Woven Fabrics

c. when sold without contents 4 paise in the Rupee

d. when sold containing contents The rate at which the content is liable to tax

(iii) Gunnies

(a) when sold without contents 4 paise in the Rupee

a. when sold containing contents The rate at which the content is liable to tax

(iv) All types of containers not mentioned above

(a) When sold without contents 4 paise in the Rupee

b. When sold containing contents The rate at which the content is liable to tax

It contains four sub-entries and the 4th entry is all types of containers not mentioned in the other three entries. The contention of the petitioner is that plastic water tank is covered under sub-entry (iv) of Entry-19 and is a packing material. On the other hand, the contention of the Revenue is that the water tank, in question, is not being used for carrying water and is being used only for the purpose of storage of water and as such, it would fall under Entry-187 of the First Schedule to the Act, which reads as under.

Description of Goods	**Rate of Tax**
Articles of plastics excluding HDPE Woven Sacks and laminated sheets and including	12 paise in the rupee
1. Monofilament rods, sticks and profile shapes of plastics;	
2. Tubes, pipes and hoses and fittings, therefore (for example, joints, elbows, flanges) of plastics	
3. Floor coverings of plastics, whether or not self-adhesive in rolls for in the form of titles; wall or ceiling coverings of plastics;	
4. Plates, blocks, sheets, excluding laminated sheet, film foil, tape, strip and other flat shapes	

This question has been raised earlier also and the Karnataka High Court had

an occasion to go into such a question in a judgment reported in ***Bharat Vijay Mills Ltd., vs. Commissioner of Commercial Taxes*** and in this judgment, it was held that a plastic water tank was a container. This Court had also occasion to deal with a similar matter in Tax Revision Case No. 2 of 2006, dated 31-01-2006, where the question related to plastic cups and tumblers and this Court held that plastic cups and tumblers were basically containers and would fall within Entry-19 of the First Schedule to the Act. The judgment was based on a Supreme Court judgment in ***Claridge & Company Limited vs. Collector of Central Excise,*** wherein the Supreme Court held that egg trays would fall within the meaning of expression of "container".

For these reasons, we feel that the impugned orders cannot sustain. However, an objection was taken by the learned Government Pleader that the impugned orders were appealable orders and the petitioner should have filed an appeal. Existence of an alternative remedy is not an absolute bar for this Court to entertain the matters under Article 226 of the Constitution of India. We consider this to be a suitable case, where the petitioner cannot be forced to go to file an appeal, as the impugned orders are manifestly erroneous.

The writ petitions are accordingly allowed and the impugned orders are set aside. No order as to costs.

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(Bilal Nazki, J)

1st March, 2006

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(G.Chandraiah, J)

Note: L.R.Copies to be marked

(b/o)

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